



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.1215 OF 2014
WITH
CIVIL APPLICATION NO.1298 OF 2024**

1. Smt. Hema Gopinath Deshpande

Age : 68 ears, Occ. Household,

R/o. Osmanabad

2. Shirish Gopinath Deshpande,

Age:Major, Occ. Agri.,

r/o. Osmanabad

..Appellants

Vs.

1. The State of Maharashtra

Through the Collector,

Osmanabad

2. The Special Land Acquisition Officer-I,

Osmanabad,

3. The Executive Engineer,

Minor Lift Irrigation Division,

Osmanabad and ors.

..Respondents

**AND
FIRST APPEAL NO.1225 OF 2014
WITH
CIVIL APPLICATION NO.1283 OF 2024**

Shirish Gopinath Deshpande,

Age : Major, Occ. Agri.,

r/o. Osmanabad

..Appellant

Vs.

1. The State of Maharashtra,

Through the Collector,

Osmanabad

2. The Special Land Acquisition Officer,

Osmanabad

3. The Executive Engineer,
Lift Irrigation Division,
Osmanabad

..Respondents

AND

FIRST APPEAL NO.1150 OF 2014

Venkatesh s/o. Sahebrao (Raje) Nimbalkar,
Age : 45 years, Occ. Agri.,
r/o. Ganesh Nagar, Osmanabad

..Appellant

Vs.

1. The State of Maharashtra,
Through the Collector,
Osmanabad

2. The Special Land Acquisition Officer No.1,
Osmanabad

3. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

..Respondents

AND

FIRST APPEAL NO.1151 OF 2014

Ajitsingh s/o. Sahebrao Raje,
Age : 50 years, Occ. Occ. Agri.,
r/o. Ganesh Nagar, Osmanabad,
Tq. and Dist. Osmanabad

..Appellant

Vs.

1. The State of Maharashtra,
Through the Collector,
Osmanabad,
Tq. and Dist. Osmanabad

2. The Special Land Acquisition,
Officer No.1, Osmanabad,

3. The Executive Engineer,
Minor Irrigation Division,
Osmanabad,
Tq. and Dist. Osmanabad and ors.

..Respondents

AND
FIRST APPEAL NO.670 OF 2018
WITH
CIVIL APPLICATION NO.9084 OF 2015

1. Godawari Marathwada Irrigation
Development Corporation, Aurangabad,
through Executive Engineer,
Lift Irrigation Division, Osmanabad
2. The State of Maharashtra,
Through the Collector, Osmanabad
3. The Special Land Acquisition Officer No.1,
Osmanabad

..Appellants

Vs.

1. Hema Gopinathrao Deshpande,
Age : Major Occ. Agri.,
r/o. Osmanabad

(died through L.Rs. already on record
respondent no.2 – Shirish, as per Registrar's
order dated 19.12.2022)
2. Shirish Gopinathrao Deshpande,
Age : Major, Occ., Agri.,
r/o. Osmanabad

..Respondents

AND
FIRST APPEAL NO.671 OF 2018
WITH
CIVIL APPLICATION NO.9087 OF 2015

1. Godawari Marathwada Irrigation
Development Corporation, Aurangabad,
through Executive Engineer,
Lift Irrigation Division, Osmanabad
2. The State of Maharashtra,
Through the Collector, Osmanabad

3. The Special Land Acquisition Officer No.1,
Osmanabad

..Appellants

Vs.

Shirish Gopinath Deshpande,
Age : Major, Occ. Agri.,
r/o. Osmanabad

..Respondents

AND
FIRST APPEAL NO.669 OF 2018
WITH
CIVIL APPLICATION NO.9078 OF 2015

1. Godawari Marathwada Irrigation
Development Corporation, Aurangabad,
through Executive Engineer,
Lift Irrigation Division, Osmanabad

2. The State of Maharashtra,
Through the Collector, Osmanabad

3. The Special Land Acquisition Officer No.1,
Osmanabad

..Appellants

Vs.

1. Ajitsinh s/o. Sahebrao Raje,
Age : Major, Occ. Agri.,
r/o. Osmanabad

2. Sow. Vijaya w/o. Ujjwalsinh Raje,
Age : 53 years, Occ. Household,

3. Ajinkya s/o. Ujjwalsinh Raje,
Age : 26 years, Occ. Agri. and Business,

4. Prasad s/o. Ujjwalsinh Raje,
Age:35 years, Occ. Agri. and Business

All r/o. Patil Niwas, Ganesh Nagar,
Osmanabad

5. Venkatesh Sahebrao Raje (Nimbalkar),
Age : 51 years, Occ. Agri.,
r/o. Ganesh Nagar, Solapur Road,
Osmanabad

..Respondents

AND
FIRST APPEAL NO.668 OF 2018
WITH
CIVIL APPLICATION NO.9081 OF 2015

1. Godawari Marathwada Irrigation
Development Corporation, Aurangabad,
through Executive Engineer,
Lift Irrigation Division, Osmanabad
2. The State of Maharashtra,
Through Collector, Osmanabad
3. The Special Land Acquisition Officer No.,1
Osmanabad

..Appellants

Vs.

1. Venkatesh Sahebrao (Raje) Nimbalkar,
Age : Major, Occ. Agri.,
r/o. Osmanabad
2. Sow. Vijaya w/o. Ujjwalsinh Raje,
Age : 53 years, Occ. Household,
3. Ajinkya s/o. Ujjwalsinh Raje,
Age : 26 years, Occ. Agri. and Business,
4. Prasad s/o. Ujjwalsinh Raje,
Age:35 years, Occ. Agri. and Business
All r/o. Patil Niwas, Ganesh Nagar,
Osmanabad
5. Ajitsingh Sahebrao Raje (Nimbalkar)
Age : 52 years, Occ. Agri.,
r/o. Ganesh Nagar, Solapur Road,
Osmanabad

..Respondents

Appearance :

F.A. NO.1215/2014 WITH C.A. NO.1298/2024, FA NO.1225/2014 WITH C.A. NO.1283/2024

Mr.A.P.Bhandari, Advocate h/f. Mr.R.R.Sancheti, Advocate for appellants

Mr.S.G.Bhalerao, Advocate for respondent-acquiring body

Mr.N.R.Dayma, AGP for respondent - State

F.A. NO.1150 OF 2014 AND F.A. NO.1151/2014

Mr.R.N.Dhorde, Senior Advocate along with Mr.Sanjay Dhudhane i/b.

Mr.V.R.Dhorde, Advocate for appellants

Mr.S.G.Bhalerao, Advocate for respondent-acquiring body

Mr.N.R.Dayama, AGP for State

F.A. NO.668 of 2018, F.A. NO.669 of 2018, F.A. NO.670 of 2018 AND F.A. NO.671 of 2018

Mr.S.G.Bhalerao, Advocate for appellants

Mr.R.N.Dhorde, Senior Advocate along with Mr.Sanjay Dhudhane i/b.

Mr.V.R.Dhorde, Advocate for respondent nos.1 and 5 in F.A. no.668/2018 and F.A. No.669/2018

Mr.N.R.Dayama, AGP for respondent - State

Mr.A.P.Bhandari, Advocate h/f. Mr.R.R.Sancheti, Advocate for respondent nos.1 and 2 in F.A. No.670/2018 and for respondent in F.A. No.671/2018

CORAM	:	R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON	:	JULY 26, 2024
PRONOUNCED ON	:	AUGUST 20, 2024

JUDGMENT (*Per R.G.Avachat, J.*) :-

These appeals under Section 54 of the Land Acquisition Act, 1894, ("the Act", for short) are decided by this common judgment, since the challenge therein is to one and the same award passed by the Reference Court (Civil Judge, Senior Division, Osmanabad), on 07.12.2013, in a group of Land Acquisition References (LARs). The first four appeals in this group of eight appeals, have been preferred by the owners, whose lands have been acquired by the respondent - Godawari Marathwada Irrigation Development Corporation (acquiring body), for construction of water storage tank, Shekapur-Dam, Dist. Oamanabad.

2. For the sake of convenience, the parties are referred to as per their status described in the first four appeals, i.e. appellants/land owners and respondents, collectively, as acquiring body.

3. Learned counsel for the appellants/land owners did not urge for enhancement of the compensation awarded by the reference court. They have restricted their prayer for grant of statutory benefits in the nature of interest under Section 28 of the Act.

4. The appellants/land owners preferred Civil Applications for production of additional evidence in the nature of certified copies of certain sale-deeds, notification and the map indicating that the lands acquired were brought within the limits of the Municipal Council, Osmanabad. The applications have been supported with affidavits. It has been averred in the applications that some of the sale-deeds were before the reference court in connected L.A.Rs. arising out of same acquisition proceedings.

5. Since the documents sought to be produced are certified copies of the sale-deeds and government notification along with the map, we allow these applications (i.e. Civil Application Nos.1298 of 2024 in F.A. No.1215 of 2014 and Civil Application No.1283 of 2024 in F.A.No.1225 of 2014) at the first instance, for the reasons given therein. Needless to mention, Section 51-A of the Act provides that , *"in any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document"*.

6. Learned counsel for the appellants/land owners would submit that the reference court has given cogent/convincing reasons

in paragraphs 19 and 22 of its judgment for grant of compensation at the rate of Rs.100/- per sq. ft. According to them, the reference court ought to have granted statutory benefits in the nature of interest under Section 28 of the Act, on the amount of compensation. Reliance has been placed on the judgment of this court dated 06.10.2015 in First Appeal No.2237 of 2014, besides the judgment of this court dated 02.09.2015, decided in a group of First Appeals being First Appeal Nos.831 of 2024 and others.

7. Learned counsel for the acquiring body would, on the other hand, submit that in view of the full-bench judgment of this court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari, 2016(4)All MR 513** the appellants/land owners are not entitled for the component of interest under Section 34 of the Act, more so, when the possession of the lands acquired, was taken over even before publication of notification under Section 4 of the Act.

8. Learned counsel for the acquiring body, on the question of quantum of compensation awarded by the reference court, would submit that there was no scope to have comparison between the acquired lands and the lands referred in the sale instances by the appellants/land owners. According to him, the acquired lands were

not fit for residential, educational and commercial activities. Those were under agricultural use at the time of acquisition. This important aspect ought to have been considered by the reference court while deciding the LARs. He would further submit that the land owners incorrectly relied on the sale instances and agreement of sale in respect of N.A. plots, when, admittedly, the acquired lands were not converted into N.A. plots. The appellants were, therefore, not entitled for N.A. rates. He would further submit that the concerned L.A.O. had visited the acquired lands before passing of the award. So, it could not be said that the award was passed without visiting the acquired lands, because, at Exh.63, there was copy of video-recording, showing LAO to have visited the lands before passing of his award.

9. Learned counsel for the acquiring body would further submit that the reference court, in paragraph 16(b) of the judgment passed in LAR No.431 of 2008, observed that the list of sale instances (Exh.37) is not considered by the S.L.A.O. from the same gut no.35/1 sold at Rs.5,424/- per R in the year 2002. The lands in the said gut number and the acquired lands are situated on either sides of village Bembali road; but, surprisingly, while passing the judgment, the reference court has not taken into consideration the

above sale instance and awarded compensation at the rate of Rs.100/- per sq. ft., i.e., Rs.1,07,600/- per R against Rs.5,424/- per R. He, ultimately, urged for dismissal of the appeals of the land owners and allowing of the appeals preferred by the acquiring body.

10. Considered the submissions advanced. Perused the judgment and award impugned herein. It is reiterated that the appellants did not claim enhancement in the quantum of compensation awarded by the reference court.

11. We have carefully perused paragraphs 17 to 23 of the impugned judgment and award, to find the reference court to have given well-founded reasons for grant of compensation at the rate of Rs.100/- per sq. ft. In paragraph 17 of the impugned judgment, there is reference to the documents Exhs.34, 37, 38, 41 to 45, indicating some parts of the lands acquired, have already been converted into non-agriculture assessment (NA). It has also been observed that NA permission was granted way back in 1989, i.e. 10-15 years before passing of the awards. It has further been observed that the LAO has admitted that the acquired lands were situated at a distance of 3-4 kms. from Osmanabad town. There is on record the Government Resolution dated 20.05.2004 (produced as additional

evidence), indicating that the acquiring lands were proposed to be brought within the limits of the municipal area of Osmanabad. A village map has also been produced as additional evidence to indicate the land gut nos.308, 317/1 and 317/2 were within the limits, but on the fringe of Osmanabad town. Admittedly, the lands have been acquired for construction of water storage tank.

12. It is true that the sale instances, certified copies whereof have been placed on record as additional evidence, pertain to small piece/s of land/s. A certified copy of the registered sale deed dated 31.03.2005, pertain to the sale of 14R land from land survey no.120 for sum of Rs.16,80,000/-. The rate per sq. ft whereof comes to Rs.112/-. This sale instance was before the reference court and relied on in LAR No.242 of 2008 between the same parties; but the same was not before the reference court in the present proceedings. The reference court relied on the judgment and award passed in LAR No.244/2008, wherein compensation was granted at the rate of Rs.94/- per sq. ft., vide the judgment and order dated 15.09.2011, i.e. long before the notification under Section 4 of the Act, relevant in these appeals was published. The reference court also took the judicial notice of the fact of inflation and dwindling value of a Rupee. It, therefore, awarded compensation at the rate of Rs.100/- per.

sq. ft. Needless to mention, it is well established that the factual recitals or observations made in a judgment or order are taken to be correct unless rebutted. The burden to rebut it is on the person who challenges it (State of Maharashtra and ors., Vs. Admane Anita Moti and ors., AIR 1995 SC 350).

13. In short, the acquired lands were at a distance of 3-4 kms. away from the town of Osmanabad. Most of the parts of the acquired lands were converted into N.A. assessment long before the notification under Section 4 was published. The purpose of acquisition is also in the mind of this court. Therefore, although some of the parts of the land acquired was agricultural, there would be no question of the appellants were required to spend or the acquiring body to spare portion of the acquired land for development, such as, roads, drainage, etc. Furthermore, way back in 2011, the lands around the acquired lands were granted compensation at the rate of Rs.94/- per sq. ft. There is nothing on record to indicate the said rate or compensation to have been reduced in appeal. We, therefore, find no reason to interfere with the award, particularly, the rate at which the compensation has been enhanced (i.e. Rs.100/- per sq. ft.)

Interest :-

14. It is not in dispute that the possession of the land acquired was taken over before the notification under Section 4 of the Act, was published. For ready reference, we refer to certain dates relevant for the purpose:-

Date of Notification u/s.4 of the Act : 28.11.2005

Date of Possession of land :

Date of award : 11.08.2006

15. The full-bench judgment of this Court in the case of **Kailash Shiva Rangari** (supra) speaks of grant of interest under Section 34 on the amount of compensation. In paragraphs 32 of the judgment of the full-bench, it has been observed:-

32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of R.L. Jain, [2004(5) ALL MR 435 (S.C.)] and Lila Ghosh, [2004(5) ALL MR 19 (S.C.)] cited supra, the position of law can be summarized as under:-

(i) If the possession of the land under acquisition is taken under Section 16 of the said Act i.e. after an award is made by the Collector under Section 11 therein, the interest would be payable under Section 34 from the date of passing of the award and we are in agreement with such a view expressed by the Division Bench of this Court (S/Shri N.V. Dabholkar and M.G. Gaikwad, JJ.) in the case of State of

Maharashtra & anr. v. Rajendra Narayanrao Gaikwad, reported in 2008 (1) BCR 839: [2007(5) ALL MR 521].

(ii) The interest as provided under Section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under Section 17 of the said Act which would obviously be after issuance of notice under Section 9(1) of the said Act. If the possession is taken under Section 17, the interest payable under Section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) Where the possession of the land under acquisition is taken prior to issuance of notification under Section 4(1), then there would be no question of invoking the urgency clause under Section 17 of the said Act and the interest under Section 34 shall start running from the date of passing of the award.

(iv)
(v)
(vi)
(vii)

16. Clause (iv) of the impugned award reads thus:-

“iv. Compensation received from LAO in respect of acquired lands, be deducted from the amount of enhanced compensation and balance amount be paid to the claimants along with interest @ 9% per annum for the period 28.11.2005 to 11.08.2006, in the light of Section 34 of the Act.”

17. Admittedly, when the possession of the lands acquired was taken over before issuance of the notification under section 4 of

the Act, there would, therefore, be no question of grant of interest under Section 34 of the Act. The Apex Court in the case of **Haridwar Development Authority Vs. Raghubir Singh and ors., (2010)11 SCC 581** has observed in paragraph 15 as under:-

15. In regard to the compensation that is offered by the Land Acquisition Collector, the interest is payable under [section 34](#) of the Act. In regard to the increase in such compensation, which is awarded by the Reference Court or any appellate court, such interest is awarded under [section 28](#) of the Act. [Sections 34](#) and [28](#) of the Act do not duplicate the award of interest, but together cover the entire amount of compensation awarded. The award of interest on the enhanced amount under [section 28](#) of the Act is the normal rule. The refusal of interest should be by assigning special or specific reasons. The contention of the Authority that the High Court ought not to have awarded interest under [section 28](#) is therefore untenable.

18. In view of the above, we are inclined to partly allow the LARs preferred by the appellants, by modifying clause (iv) of the impugned award.

19. In the result, the following order :-

(1) First Appeal Nos.1215 of 2014, 1225 of 2014, 1150 of 2014 and 1151 of 2014 preferred by the claimants are partly

allowed, with modification in Clause (iv) of the operative order. Clause (iv) of the operative order dated 07.12.2013, passed by the reference court, is replaced as under:-

(a) The respondent/acquiring body shall pay the appellants interest at the rate of 9% per annum, on the amount of enhanced compensation for a period of first year commencing from the date of the award, i.e., 11.08.2006 to 10.08.2007, and at the rate of 15% per annum for the period from 11.08.2007 until the entire enhanced amount of compensation is paid to the appellants/claimants or deposited with this court.

(b) We grant the acquiring body a period of six months to pay up the balance amount of compensation.

(2) First Appeal Nos.668 of 2018, 669 of 2018, 670 of 2018 and 671 of 2018, preferred by the acquiring body are dismissed.

(3) In view of dismissal of the First Appeals of the acquiring body, the Civil Applications for grant of stay therein, stand disposed of. Stay granted therein, if any, stands vacated.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP